

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 992 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHANDUBHAI NATVARLAL PARMAR

Versus

COLLECTOR AND SETTLEMENT COMMISSIONER

Appearance:

MR HARIN P RAVAL for Petitioner
MR BD DESAI,AGP, for Respondent No. 1, 2 & 3.
RESPONDENTS NO.4 TO 6 SERVED

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 04/09/97

ORAL JUDGEMENT

1. The petitioner, by way of this petition under Article 226 of the Constitution, challenges the legality and validity of the action on the part of respondent No.1 in cancelling the sale of land bearing survey No.579, admeasuring 1 acre and 38 Gunthas situated at village Rasulpur, taluka Godhra, district Panchmahals, as per the public auction held on 5.1.1995 and also challenges the

legality of the order dated 17.1.1995 passed by respondent No.1 on the ground that the same is illegal, unlawful, arbitrary and contrary to the provisions of Administration of Evacuee Properties Act and violative of principles of natural justice.

2. The facts giving rise to the present petition are that, land bearing survey No.579 in village Rasulpur, taluka Godhra, district Panchmahals, admeasuring 1 acre and 38 Gunthas, was declared to be an evacuee property under the provisions of the Administration of Evacuee Properties Act, 1950 (hereinafter to be referred to as "the Act") by an order passed in this behalf by the Competent Authority. It appears that respondents No.4, 5 and 6 were in unauthorised occupation of the said land in question. However, on 11.6.1993, they handed over the vacant possession of the land in question to Talati-cum-Mantri of Rasulpur village by issuing Kabja Receipt. Respondent No.2, the Managing Officer and Assistant Custodian of Evacuee Property issued a public notice dated 8/12-12-1994 notifying that a public auction of the property in question will be held on 5.1.1995. As per the said notice, the public auction was, in fact, held on 5.1.1995, wherein seven intending buyers, including the petitioner and respondent No.4, remained present. As per the terms of the auction, the last highest bidder was required to deposit 20% of the amount of bid at that time with the authorities and the remaining 80% were to be deposited within a period of 15 days, on the auction being approved by the Competent Authority. There is no dispute to the fact that the second respondent fixed the upset price of the property in question at Rs.12,000/-. It is also not in dispute that, in the auction, amongst all the seven tenderers, the petitioner's last bid of Rs.15,000/- was the highest. On the conclusion of the auction, a Panchnama was also drawn by the second respondent, wherein all the tenderers, including the petitioner had signed. As the petitioner's bid of Rs.15,000/- was the highest, he was made to deposit 20% of the amount of Rs.15,000/- and, accordingly, the petitioner deposited a sum of Rs.3000/before the second respondent. It appears that, the Collector and Settlement Commissioner, Godhra, respondent No.1, by his order dated 17.1.1995 cancelled the aforesaid auction on the following reasons :-

- (a) That in accordance with the instruction of the Government as contained in the wireless message No.LND/3995/84/A dated 12.1.1995, the Government had issued a prohibitory ban on the grant of land and, therefore, the land could not be disposed of

by auction;

(b) That having regard to the highest bid received in the auction, the price was not sufficient; and

(c) That a Civil Suit was filed between two persons who had taken part in the auction proceedings.

As stated above, the petitioner has challenged the said order in this petition.

3. Mr. H.P. Raval, learned Advocate appearing for the petitioner has challenged the impugned order by contending that the same is illegal, erroneous and against the principles of natural justice, inasmuch as, the petitioner has not been heard before the order was passed. Mr. Raval contended that the reasons given in the said order are totally irrelevant and not germane to the issue involved in the matter. On the other hand, Mr. B.D. Desai, learned Assistant Government Pleader, appearing for the respondents, while supporting the order passed by the first respondent, has raised a preliminary contention regarding the maintainability of the petition. In the submission of Mr. Desai, the petitioner has not exhausted a remedy available to him by filing an appeal to the Chief Settlement Commissioner, under Section 23 of the Displaced Person (Compensation and Rehabilitation) Act, 1954. Ordinarily, this Court will not exercise its powers under Article 226 of the Constitution of India when the remedy by way of an appeal or a revision is available to the petitioner. I could have accepted the submission of Mr. Desai by relegating the petitioner to prefer an appeal against the impugned order. However, considering the fact that this Court on 14.2.1997, after hearing the learned Advocate for the petitioner, has issued the Rule and has granted ad-interim relief as prayed for, it would be meaningless now, at this stage, to relegate the petitioner to approach the Appellate Authority. It is also to be noted that on the facts of the case, when the impugned order does not stand any further, it is too much to accept this technical contention asking the petitioner to go before the Appellate Authority. In view of this, I see no reason to accept the submission of Mr. Desai that the petition is not maintainable.

4. As stated above, the auction of the plots in question is cancelled on 3 reasons. The first reason states that in accordance with the instructions of the Government as contained in wireless message

No.LND/3995/84/A dated 12.1.1995, the Government has issued prohibitory ban on the grant of land and, therefore, the land could not be disposed of by grant or auction. The said wireless message is produced at Annexure-I to the petition, which reads as under :-

"As per the instructions received from the Chief Election Commissioner the Grant of Government land to individuals/agencies/instructions is covered under the provisions of the Model Code of Conduct(..) You are requested not to issue any orders of land grant till the elections are over(..) Also do not hand over the possession of land where the orders are issued(..) Revel 382 010."

5. Reading the said wireless message, I am of the view that the same cannot be made applicable to the transaction took place in present the case. This is not a case where any grant of land is made by the Government in favour of the petitioner. As such it is the case of sale of land by public auction. Assuming that the directions contained in the said wireless message are applicable to the present case, the same should at the most can be treated as prospective from the date of wireless message, i.e. 12.1.1995, while in the present case, the public auction was held on 5.1.1995. Apart from that, the said instructions were only temporary prohibition in view of the ensuing Legislative Elections. No sooner the elections were over, the so called temporary prohibition also came to an end and, therefore, the so called ban was required to be lifted. In any case, the said instructions merely contemplated stoppage of issuance of orders of grant of Government land and for no stretch of imagination, it can be construed that the same contemplated cancellation of grant of Government land. In view of this, I am of the view that the first ground of cancellation of auction in the impugned order is totally irrelevant and based on extraneous facts.

6. The contention raised by respondent No.1 that the highest bid of the petitioner is not sufficient, in my view, is also not tenable, inasmuch as the Competent Authority itself had fixed the upset price at Rs.12101/and the petitioner's bid of Rs.15000/- was 25% higher than the upset price, which cannot, therefore, be said to be insufficient.

7. There comes the last ground, namely, that there is civil proceedings between one of the participants in the auction and other persons pending. The petitioner has produced the certified copy of the plaint and Ex.5

application of Regular Civil Suit No.23 of 1995 filed by respondents No.4, 5 and 6. Reading the prayer made in the plaint and the injunction application, it is evident that the auction proceedings have not been challenged in the said suit. Respondents No.4, 5 and 6 have prayed for an injunction not to take over the possession of plots in question as they are holding the same by virtue of adverse possession. It is to be noted that when the interim relief was prayed for, the learned Civil Judge (S.D.), Godhra, has issued only notice to the respondents made it returnable on 18.1.1995. It is also to be noted that in the said suit, written statement Ex.23 was filed on behalf of the defendants No.3 to 6, which included present respondents No.1 and 2, wherein they have categorically stated that the plot in question was an evacuee property and as per the plaintiffs (present respondents No.4 to 6) they have not paid the price for getting the possession. They have themselves handed over the possession to the Talati-cum-Mantri on 11.6.1993 and, thereafter, on 5.1.1995, the auction was held, wherein seven persons, including present respondent No.4 have participated. This would, on the contrary, go to suggest that respondent No.1 justified the auction and, therefore, it is not now open for him to take resort to the ground of pendency of the suit. Apart from this, as can be seen from the certified copy of the order passed by the learned Trial Judge dated 31st July, 1995, the said suit has already been dismissed for default. The petitioner has filed an affidavit dated 22nd July, 1997 and has produced the certified copy of the documents referred. In the affidavit, the petitioner has stated in no uncertain terms that, after having made inquiries in the Trial Court, respondents No.4 to 6 have not filed any application for restoration of the civil suit nor the said order is challenged in appeal or any other proceedings. Respondents No.4 to 6, even though have been served by way of direct service, have not appeared before this Court to contradict the averments made in the affidavit filed by the petitioner referred to above. In view of this, it is clear beyond any manner of doubt that the ground raised in the impugned order that one of the participants of the auction has filed a civil suit and, therefore, the auction is required to be cancelled is not tenable. In view of the fact that there is no challenge to the auction proceedings in the said suit coupled with the fact that no injunction was granted by the Trial Court, and in any case, when the suit itself is disposed of, in my view, the reason of pendency of the civil suit is also totally irrelevant and, therefore, not tenable.

8. In view of the above discussion, I am of the view

that none of the reasons recorded by respondent No.1 in cancelling the auction in question is tenable and, therefore, the impugned order is required to be quashed and set aside.

9. In the result, this petition is allowed. The impugned order Annexure-G dated 17.1.1995 passed by respondent No.1 is quashed and set aside. Respondent No.1 is directed to consider the question of granting approval to the auction of the plot in question held on 5.1.1995, in the light of this judgment. Rule is made absolute according, with no order as to costs.

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